

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of
GOLDEN STATE WATER COMPANY
(U 133 W) for an Order authorizing it to
Increase Rates for Water Service by
\$2,812,100 or 32.61% in 2008; by \$-
178,700 or -1.51% in 2009; and by
\$109,900 or 0.92% in 2010 in its Arden
Cordova Customer Service Area.

A.07-01-009

A.07-01-010

A.07-01-011

A.07-01-012

A.07-01-013

A.07-01-014

A.07-01-015

And Related Matters.

**COMMENTS OF GOLDEN STATE WATER COMPANY (U 133 W)
ON RULING OF ADMINISTRATIVE LAW JUDGE DeANGELIS
PROPOSING TO INCLUDE ADDITIONAL EVIDENCE
IN THE RECORD ON FLUORIDATION OF WATER**

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September 6, 2007

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I. INTRODUCTION

The August 24, 2007 Ruling issued by assigned Administrative Law Judge DeAngelis invites parties to submit comments today on two proposals. In the Ruling, the ALJ proposes to: (a) incorporate two documents, Exhibits A and B for identification, into the record; and (b) address the issue of whether the Commission should direct Golden State Water Company (GSWC) to fluoridate water provided to customers in the Bay Point Customer Service Area. In these Comments, GSWC will address both of ALJ DeAngelis's proposals.

To begin, as a general matter of policy, GSWC does not object to being directed to fluoridate the water it delivers to its customers *provided* that the Commission determines fluoridation is in the best interest of customers and *provided further* that GSWC is authorized full recovery of the related capital costs and operating expenses. In addition, GSWC requests that the Commission's consideration of providing fluoridated drinking water to the Bay Point CSA be resolved in a second phase of this proceeding, so as not to delay the issuance of a final 2007 decision in GSWC's recently submitted General Rate Case.

As explained more fully below, GSWC responds to the ALJ's proposals as follows. GSWC objects to the entry of Exhibit A for identification into the record. GSWC has no objection to admission of Exhibit B into evidence. GSWC requests evidentiary hearings with written direct testimony, the opportunity to cross-

examine witnesses and submission of post-hearing briefs (Phase II) on the issue of whether the water delivered to customers in the Bay Point CSA should be fluoridated. GSWC respectfully submits that consideration of the related issue of GSWC's recovery of the costs of such fluoridation – both capital and O&M – is fundamental to reaching a decision whether to fluoridate in the first instance, and therefore also must be resolved in Phase II.

II. THERE IS NO FOUNDATION FOR ADMITTING EXHIBIT A INTO THE EVIDENTIARY RECORD.

GSWC's understanding from reviewing the ALJ's Ruling is that Phase II will address issues related only to fluoridating the drinking water supply in the Bay Point CSA. Yet Exhibit A for identification addresses fluoride in only one paragraph of Dr. Brunner's three-page letter – the third paragraph on page 1 of Exhibit A for identification. GSWC does not object to that one paragraph.

However, the remainder of Dr. Brunner's letter addresses his opposition to GSWC's "rate hike," his alleged comparison of rates for water service within Contra Costa County, and his views on "disinfection byproducts" including trihalomethanes (THM). GSWC objects to all these paragraphs and table, on the grounds of lack of foundation and relevance. The implications from Dr.

Brunner's assertions about THMs and GSWC's water supply are unsubstantiated and incorrect.

Indeed, GSWC contacted Dr. Bruce A. Macler, Ph.D., Regional Toxicologist for Region 9 of the United State Environmental Protection Agency concerning Exhibit A's statements regarding health risks. Dr. Macler read Exhibit A and commented as follows:

"It is USEPA's position that drinking water at or below the Maximum Contaminant Level for a given contaminant is safe for consumption over a lifetime. With respect to disinfection byproducts as a class, we regulate these as groups (total trihalomethanes, haloacetic acids), so estimating risks depends on the specific levels of each constituent. However, the MCLs are set such that if the drinking water contained 100% of the most problematic constituent at the MCL, it would still be below USEPA's risk threshold. I should also point out that risk estimates below the level of epidemiological resolution are extrapolations. Because we regulate at risk levels of between 1/10,000 and 1/million additional cancers over a lifetime, which is far below what epidemiology can show, **there is no way to say that one low level is significantly different from another - they are just different estimates.**"

May 11, 2007 Email from USEPA Bruce Macler to GSWC's Dawn R. White (emphasis added).

Subsequent to this email, GSWC arranged a June 8, 2007 meeting between USEPA's Dr. Macler and Dr. Brunner, the author of Exhibit A. Dr. Macler stated during the meeting that, in his opinion, Exhibit A implied that there were health

issues and increased risk associated with the drinking water provided in GSWC's Bay Point CSA, and that such an implication was irresponsible.

Should the Commission rule that any portion of Exhibit A **other** than the third paragraph on page 1 dealing with fluoridated water is admitted into evidence, GSWC requests the opportunity to present contrary evidence regarding water quality and disinfection byproducts including THMs, such as the above-quoted email, written testimony of Dr. Macler and other experts, and written testimony from GSWC's in-house water quality experts.

With respect to Exhibit B, as stated above, GSWC does not object to its admission into the record in this proceeding.

III. FLUORIDATING THE DRINKING WATER SUPPLY IS NOT WITHOUT PUBLIC CONTROVERSY.

GSWC does not take a position on whether it is appropriate public policy to provide drinking water containing fluoride to its customers. If GSWC's customers want fluoridated water, or if GSWC is ordered to provide fluoridated water, it will do so, provided that it receives full recovery of its capital and operating costs incurred in providing fluoridated water. Yet it should come as no surprise to the Commission that many consumers and public health experts

still challenge the overall health benefits of drinking fluoridated water. To be sure, there are still strong opponents to fluoridated drinking water.

Indeed, customers attending the Public Participation hearing held in May 2007 in the Bay Point CSA presented differing views about fluoride in their drinking water. While Exhibits A and B for identification endorse the view that fluoride in the drinking water supply is a “safe, beneficial and cost-effective public health measure for preventing dental decay,” not all of GSWC’s Bay Point customers agree. For example, Dr. Peter Radetic stated his opposition to fluoride in his drinking water at page 321 of the Reporter’s Transcript.

Moreover, as the ALJ is aware, the Bay Point CSA customers have not received any notice that this general rate case might result in their drinking water supply containing fluoride. Nor are those customers on notice that their rates will increase to provide GSWC with recovery of the capital and operating costs of providing fluoridated water. The Commission should consider whether it is premature to address fluoridation in this proceeding for due process reasons.

Recently, Metropolitan Water District announced that it would begin delivering fluoridated water to its member agencies on or about October 1, 2007. One such member agency is Calleguas Municipal Water District in southern California. Attached to these Comments is a copy of a missive from the “Citizens for Safe Drinking Water” sent to Calleguas MWD, threatening the “filing of

lawsuits” if Calleguas MWD delivers fluoridated water to its customers. One can only wonder if such threats lie in GSWC’s future if the Commission orders fluoride in the Bay Point CSA drinking water supply, particularly in the absence of customer notice and support. It is clear from reading the attachment that the Citizens for Safe Drinking Water are opposed to fluoridated water. From the record in this proceeding, the support for fluoride in the Bay Point CSA is ambivalent, at best.

IV. THE COMMISSION MUST AUTHORIZE COST RECOVERY IF IT ORDERS GSWC TO FLUORIDATE ITS DRINKING WATER SUPPLY.

The ALJ Ruling asks the parties to address the relevance of Sections 116409, 116410, and 116415 of the Health and Safety Code, and any cost issues associated with fluoridation in the Bay Point CSA. These are the correct Code sections for the Commission to review in deciding whether to direct GSWC to fluoridate water provided to customers in the Bay Point CSA. Plainly, these sections of the code **do not mandate** that GSWC fluoridate the drinking water supply in the Bay Point CSA.

Section 116410(a) of the Code provides that each “public water system with at least 10,000 service connections . . . shall be fluoridated in order to promote the public health of Californians of all ages through the protection and

maintenance of dental health, a paramount issue of statewide concern.” The Bay Point CSA has approximately 5,070 service connections. Thus, Section 116410 does not apply and does not require that the Bay Point CSA water system “shall” be fluoridated.

However, the Code does provide for the situation where a public water system the size of GSWC’s Bay Point CSA decides or chooses to fluoridate its drinking water supply notwithstanding that it is not required to do so. Section 116415(f) of the Code provides that a “public water system with *less* than 10,000 service connections *may elect to comply* with the standards, compliance requirements, and regulations for fluoridation established pursuant to this section and Section 116410.” Cal. Health & Saf. Code § 116415(f)(emphasis added).

Moreover, if GSWC does fluoridate the drinking water in the Bay Point CSA as a result of this Phase II proceeding, then the Code also provides that GSWC is entitled to recover all of its costs incurred in providing fluoridated water:

“A public water system subject to the jurisdiction of the Public Utilities Commission **shall be entitled to recover from its customers all of its capital and associated costs, and all of its operation and maintenance expenses** associated with compliance with this section and Section 116410. The Public Utilities Commission shall approve rate increases for an owner or operator of a public water system that is subject to its jurisdiction within 45 days of the filing of an application or an

advice letter, in accordance with the commission's requirements, showing in reasonable detail the amount of additional revenue required to recover the foregoing capital and associated costs, and operation and maintenance expenses.”

Cal. Health & Saf. Code § 116415(h)(emphasis added).

Accordingly, GSWC requests evidentiary hearings with the opportunity to present written direct testimony, cross-examine witnesses, and submit post-hearing briefs. GSWC will show “in reasonable detail” the amount of additional revenue required to recover the capital and associated costs and operation and maintenance expenses GSWC will incur in providing fluoridated drinking water to its customers in the Bay Point CSA.

By way of background, there are three types of fluoride treatment chemicals that can be used to fluoridate water: sodium fluoride, sodium fluorosilicate and fluosilicic acid. GSWC has historically provided cost estimates to the State for treatment using sodium fluoride. A saturator is required to fluoridate water using sodium fluoride, which is costly.

Some water purveyors fluoridate using fluosilicic acid, which is simpler to feed in the water system but very dangerous to work with. Fluosilicic acid is supplied in carboys or drums, mounted on a platform scale. A solution feed pump injects the acid into a main in proportion to the water flow. Maintaining the correct dosage is critical, so the system must be equipped with on-line

analyzers. Also, fluosilicic acid is extremely corrosive and must have secondary containment as well as a secure enclosure.

GSWC will present testimony at the Phase II evidentiary hearings on its proposed infrastructure to fluoridate the drinking water supply in the Bay Point CSA, and the method and manner in which such fluoridation should occur, if ordered in this proceeding. GSWC will also present testimony on the capital costs and operating expenses it will incur in fluoridating the drinking water in Bay Point. As a rough estimate at this time, GSWC expects it may incur capital costs of approximately \$500,000 to design and construct the infrastructure needed to fluoridate the water. GSWC also estimates that it will incur about \$30,000 annually in operating and maintenance expenses.

Dated: September 6, 2007

Respectfully submitted,

Patricia A. Schmiede
Law Office of Patricia A. Schmiede

_____/s/_____
Patricia A. Schmiede
Attorney for Applicant
Golden State Water Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"Comments of Golden State Water Company (U 133 W) on Ruling of Administrative Law Judge DeAngelis Proposing To Include Additional Evidence In the Record on Fluoridation of Water"** on all known parties to A.07-01-009, et al., by sending the entire document as an attachment to all parties who provided electronic mail addresses to the Commission, as follows: rmd@cpuc.ca.gov; cwl@cpuc.ca.gov; vcc@cpuc.ca.gov; flc@cpuc.ca.gov; snr@cpuc.ca.gov; jkersnar@ojaicity.org; kstaples@verizon.net; enriqueg@lif.org; wdmiley@aol.com; kcouturie@pobox.com; kswitzer@gswater.com; jgaron@gswater.com; rkmoore@gswater.com .

Executed on September 6, 2007 at San Rafael, California.

_____/s/_____
Patricia A. Schmiede